



Excessive and unjustified use of force during a police operation in a Roma community and inadequate investigation

In today's **Committee** judgment in the case of [Lingurar and Others v. Romania](#) (application no. 5886/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of both the substantive and procedural aspects of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;

no violation of the substantive aspect of Article 14 (prohibition of discrimination) taken together with Article 3 of the Convention, and

a violation of the procedural aspect of Article 14 taken together with Article 3.

The case concerned two police operations in the Roma community of Pata Rât to locate individuals suspected of theft.

The Court found that the use of force by the police against Mr Lingurar and Mr Lăcătuș had been excessive and unjustified in the circumstances. Mr Lingurar had been thrown to the ground by a police officer and Mr Lăcătuș had been struck by a truncheon although he was putting up no resistance and had been immobilised by two police officers. The Court considered that these acts of brutality were intended to give rise to feelings of fear, anguish and inferiority capable of humiliating and debasing him.

No investigation had been carried out by the authorities to ascertain whether the police actions complained of by Mr Lingurar had been necessary in view of his conduct or possible resistance. The investigation into the allegations made by Mr Lăcătuș had lasted more than eight years.

Lastly, without accepting that there had been a racist motive to the police conduct during the operation, the Court considered that the authorities' investigation into the applicants' allegations of racism had not been sufficiently thorough.

The judgment is final.

Principal facts

The applicants, Mr Augustin Lingurar, Mr Trandafir Lăcătuș and Ms Minerva Covaci, are Romanian nationals who were born in 1976, 1986 and 1985 respectively. They belong to the Roma ethnic group and live in Cluj-Napoca.

In the course of 2005 the police received an increasing number of complaints of theft. Following an investigation, they organised an initial operation in the Pata Rât community on 5 November 2005. Police officers recovered a number of stolen objects and made two arrests. As a result of the discovery of stolen goods and evidence indicating that other suspects were living among the Roma community, the Cluj County Police Inspectorate (IPJ) approved the organisation of a large police operation in Pata Rât on 8 November 2005. The operation began at 6 a.m. and ended at 10 a.m. The applicants refused to leave their houses and were forcibly removed from them. At the close of the operation the police officers set light to the camp.

On 21 December 2005 the applicants lodged a criminal complaint against all of the police officers and gendarmes involved in the operations of 5 and 8 November 2005. They accused them of misconduct on account of verbal violence, assault, threats and destruction by fire.

On 22 October 2008 the Cluj Court of Appeal discontinued the proceedings in respect of all the charges; this was confirmed on 7 April 2009.

The applicants lodged an appeal with the High Court of Cassation and Justice. It upheld the appeal and noted, among other points, that certain steps in the preliminary investigation had been carried out by military prosecutors, who did not meet the requirements of independence in relation to the gendarmes involved in the events. It sent the file back to the public prosecutor's office. That office carried out some of the requested investigative acts, then discontinued the proceedings.

On 9 May 2012 the Oradea Court of Appeal set aside the order discontinuing the proceedings, on the grounds that not all of the investigative acts requested by the High Court had been carried out, and sent the case back to the public prosecutor's office. On 27 June 2013 that office again issued a finding that there was no case to answer in respect of all the police officers and gendarmes in question. The applicants then submitted a complaint about this decision to the Oradea Court of Appeal. By a final judgment of 5 June 2014, the appeal court dismissed the complaint and upheld the order discontinuing the proceedings.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicants complained that they had been subjected to ill-treatment by State officials during the events of 5 and 8 November 2005 and that no effective investigation had been carried out into their complaint. They submitted that there had been a breach of their right to respect for their private and family life and their home on account of the allegedly illegal search conducted by the authorities, and relied on Article 8 (right to respect for the home). Lastly, relying on Article 14 (prohibition of discrimination) taken together with Articles 3 and 8, they alleged that they had been discriminated against on account of their ethnic origin.

The application was lodged with the European Court of Human Rights on 18 December 2014.

Judgment was given by a Committee of three judges, composed as follows:

Paulo **Pinto de Albuquerque** (Portugal), *President*,
Egidijus **Kūris** (Lithuania),
Iulia Antoanella **Motoc** (Romania),

and also Andrea **Tamietti**, *Deputy Section Registrar*.

Decision of the Court

Article 3

Ms Covaci had not submitted any evidence in support of her allegations of ill-treatment. Nor was there any medical document attesting that she was pregnant during the period when the police operations took place. Mr Lingurar had also failed to submit any document showing that he had been struck on the face. Their complaints were therefore manifestly ill-founded.

Mr Lingurar had been removed from his house and thrown to the ground by a police officer, as evidenced by the video footage included in the case file. The Court considered that the fact of being thrown to the ground by a State agent diminished human dignity. The Court noted that there was nothing to suggest that the applicant had posed a threat to the authorities or that he was considered as particularly dangerous. It concluded that the force used against Mr Lingurar had been excessive and unjustified in the light of the circumstances.

The action of the police officer who had struck Mr Lăcătuș with a truncheon, although he was putting up no resistance and two police officers were holding his arms, could not, in the Court's view, be regarded as having been justified by the applicant's conduct. The Court found that this action had been intended to arouse in its victim feelings of fear, anguish and inferiority capable of humiliating and debasing him. It concluded that the use of force against Mr Lăcătuș had been excessive and unjustified in the light of the circumstances.

With regard to the necessary investigations, the Court noted that the investigation had focused only on the circumstances in which the police operation had taken place and on the allegations of ill-treatment made by Mr Lăcătuș, but had never considered this latter aspect in respect of Mr Lingurar. No investigation had been carried out at domestic level to ascertain whether the treatment about which he complained had been required in view of his conduct or his possible resistance to police orders. As to the investigation into Mr Lăcătuș's allegations, it had lasted for more than eight years.

The Court concluded that the absence of an investigation into the necessity of the force used against Mr Lingurar and the eight-year duration of the investigation into Mr Lăcătuș's allegations led it to find that the Romanian authorities had failed in their positive obligations under Article 3 of the Convention.

Article 8

The Court noted that the applicants had not lodged a formal complaint about the police not having search warrants, and that the manner in which they had informed the authorities about this shortcoming did not correspond to the requirements of domestic law. This complaint had therefore to be rejected for failure to exhaust domestic remedies.

Article 14 taken together with Article 3

Although the manner in which the police operation had been organised was open to criticism, given its scale in comparison to the declared aims – locating individuals who were suspected of theft –, the Court did not consider that the treatment inflicted on the applicants had a racist motive. However, the Court considered that the investigation conducted by the authorities into the applicants' allegations of police racism had not been thorough enough.

The domestic authorities had confined themselves to providing very general responses, holding that the mere fact of having been able to lodge a criminal complaint and that an investigation had been conducted amounted to evidence of a lack of discrimination. Such a response was insufficient for the purposes of Article 14.

The Court considered that the Romanian authorities had failed in their obligation, imposed by Article 14, to take all the necessary measures to investigate whether there had been a racist motive in the organisation of the police operation of 8 November 2005.

Just satisfaction (Article 41)

The Court held that Romania was to pay Mr Lingurar and Mr Lăcătuș 11,700 euros (EUR) each in respect of non-pecuniary damage and EUR 3,100 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.